

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FIREMAN'S FUND INSURANCE)	
COMPANY, A/S/O TRANSMAR)	
COMMODITY GROUP, LTD.,)	Case No.: 07-014
)	
Plaintiff,)	
)	
v.)	TRIAL BY JURY OF
)	TWELVE DEMANDED
UNITED COCOA PROCESSOR, INC.,)	
)	
Defendant.)	

ANSWER OF DEFENDANT UNITED COCOA PROCESSOR, INC.
WITH AFFIRMATIVE DEFENSES

1. Denied. After reasonable investigation, answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

2. Denied. After reasonable investigation, answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

3. Admitted.

4. Denied. After reasonable investigation, answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

5. Denied. After reasonable investigation, answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

6. Admitted as to the date and location of the fire at the facility. The remaining allegations are denied.

7. Denied.

8. Denied. After reasonable investigation, answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

9. Answering defendant here incorporates its responses to paragraphs 1 through 8 herein by reference.

10. Denied. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

11. Denied. After reasonable investigation, answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

WHEREFORE, the answering defendant respectfully request that this cause of action against them be dismissed with prejudice.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

____ Plaintiff's causes of action may be barred in whole or in part by the execution of a general release.

THIRD AFFIRMATIVE DEFENSE

____ If Plaintiff sustained the injuries as alleged in their Complaint, which is herein strictly denied, then they were caused by the acts or omissions of entities/individuals over which/whom

Answering Defendant had no control nor legal duty to control.

FOURTH AFFIRMATIVE DEFENSE

At all times material hereto, Answering Defendant acted with due care and proper care under the circumstances.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate their damages.

WHEREFORE, Answering Defendant respectfully requests that this cause of action against them be dismissed with prejudice.

REGER RIZZO KAVULICH & DARNALL LLP

/s/ Louis J. Rizzo, Jr., Esquire

Louis J. Rizzo, Jr., Esquire
Delaware State Bar I.D. No. 3374
1001 Jefferson Plaza, Suite 202
Wilmington, DE 19801
(302) 652-3611
Attorney for Defendant

Dated: February 19, 2007

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FOR THE DISTRICT OF DELAWARE

FIREMAN'S FUND INSURANCE)	
COMPANY, A/S/O TRANSMAR)	
COMMODITY GROUP, LTD.,)	Case No.: 07-014
)	
Plaintiff,)	
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v.)	TRIAL BY JURY OF
)	TWELVE DEMANDED
UNITED COCOA PROCESSOR, INC.,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 19th day of February, 2007 that a true and correct copy of the Answer of Defendant United Cocoa Processor, Inc. with Affirmative Defenses has been served electronically and by first class mail, postage prepaid, upon the following:

Michael K. Tighe, Esquire
Tighe & Cottrell, P.A.
704 North King Street, Suite 500
P.O. Box 1031
Wilmington, DE 19899

William Mullin, Esquire
Graham, Miller, Neandross,
Mullin & Roonan, L.L.C.
2350 Broadway
New York, New York 10024

REGER RIZZO KAVULICH & DARNALL LLP

/s/ Louis J. Rizzo, Jr., Esquire

Louis J. Rizzo, Jr., Esquire
Delaware State Bar I.D. No. 3374
1001 Jefferson Plaza, Suite 202
Wilmington, DE 19801
(302) 652-3611
Attorney for Defendant

Dated: February 19, 2007

(REV. 07/89)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS OF THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS Fireman's Fund Insurance Company a/s/o Transmar Commodity Group, Ltd.	DEFENDANTS United Cocoa Processor, Inc.						
b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) Marin, CA	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT New Castle (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED						
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) William Mullin, Esquire c/o Graham, Miller, Neandross, Mullin & Roonan, LLC, 2350 Broadway, New York, NY 10024 (212) 877-4486	ATTORNEYS (IF KNOWN) Louis J. Rizzo, Jr., Esquire c/o Reger Rizzo Kavulich & Darnall LLP, 1001 Jefferson Plaza, Suite 202, Wilmington, DE 19801 (302) 652-3611						
II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)						
<input type="checkbox"/> 1 U.S. Government <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question <input checked="" type="checkbox"/> 4 Diversity (Indicated Citizenship of Parties in Item III)	<table style="width:100%;"> <tr> <td style="width:33%;"> Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country </td> <td style="width:33%;"> PTF DEF <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 3 </td> <td style="width:33%;"> Incorporated or Principal Place Of Business in This State Incorporated and Principal Place Of business in Another State Foreign Nation </td> </tr> <tr> <td></td> <td></td> <td> PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6 </td> </tr> </table>	Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country	PTF DEF <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 3	Incorporated or Principal Place Of Business in This State Incorporated and Principal Place Of business in Another State Foreign Nation			PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country	PTF DEF <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 3	Incorporated or Principal Place Of Business in This State Incorporated and Principal Place Of business in Another State Foreign Nation					
		PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6					
IV. CAUSE OF ACTION (CITE THE U S CIVIL STATUE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTION STATUES UNLESS DIVERSITY)							
V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)							

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-- Med Malpractice <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Property Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -- Third Party 26 USC 7609	<input type="checkbox"/> 422 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Equipment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Right		

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

Appeal to District ☐ 7 Judge

Transferred from _____

from
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation Magistrate

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ Check YES only if demanded in complaint:
☐ UNDER F.R.C.P 23 JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions)
 IF ANY JUDGE _____ DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

February 19, 2006

UNITED STATES DISTRICT COURT

COVER.USD